

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4200 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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HARINARAYAN DUBE

Versus

UNION OF INDIA

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Appearance:

MR DHARMESH V SHAH for Petitioner

MR JC SHETH for Respondent No. 1

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 24/06/98

ORAL JUDGEMENT

RULE.

The petitioner was appointed as Constable in the year 1964. He was promoted as Head Constable on 4.12.1997. He applied for voluntary retirement on 13.2.1998. The grievance of the petitioner is that the respondents on the one hand not taking decision and on

the other, transferred him malafidely to Godhra Division.

2. It is stated by the respondent that the petitioner was punished by way of reduction in rank as Nayak to Constable on 29.9.1995. Again penalty of stoppage of one increment was inflicted by the order dated 29.10.1997. In view of this, till he completes one year of punishment, he cannot be permitted to retire voluntarily. The petitioner has also been transferred from Ahmedabad to Godhra, by order dated 2.5.1998.

3. Having heard the learned Advocates for the parties, I am of the view that the respondent authorities are not correct in not considering the petitioner's application for voluntary retirement only for the reason that he has still to undergo punishment of stoppage of increment with future effect i.e. upto November, 1998. This is a matter of calculation. The amount of increment can be calculated and deducted from the salary. It is also stated by the learned Advocate that the petitioner is over-weight and therefore, physically it has become difficult for him to discharge his duties. In view of the above, in my view, the petitioner's transfer from Ahmedabad to Godhra, more particularly, when he has asked for voluntary retirement, is arbitrary and unreasonable.

4. In view of the aforesaid, this Special Civil Application is allowed and the order of transfer dated 2.5.1998 transferring the petitioner from Ahmedabad to Godhra Division is quashed and set aside. He will be forthwith, restored to Ahmedabad. A decision on application for voluntary retirement shall be taken in the light of the observations made above within a period of one month from today. The petitioner apprehends that if he is allowed to continue in service, he may be falsely implicated in any other criminal case. It is pointed out that the first enquiry was on a frivolous charge of theft of 1.400 kg. sweet. Without going into the merit of the grievance, ends of justice would be met, if direction is made that if the petitioner applies for leave, the same shall be granted forthwith.

Rule made absolute. Direct Service.

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msp.